



Costs Decision

Site visit made on 3 September 2019

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 October 2019

Costs application in relation to Appeal Ref: APP/A3655/W/19/3229532 9 Westfield Avenue, Woking GU22 9PN

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mrs Jenny Press for a full award of costs against Woking Borough Council.
 - The appeal was against the refusal of planning permission for a development described as 'Part demolition of existing residential dwelling. Single storey rear extension, front entrance porch, loft conversion with front and rear dormer windows to existing dwelling. Proposed new residential dwelling built on the footprint of the demolished section of the existing dwelling.'
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Preliminary Matters

2. For this costs decision and my main decision, I have taken the address of the property from that listed on the Royal Mail website, given the different addresses listed on the application form and appeal form.

Reasons

3. The Government's Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and that this unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
4. The appellant states that the Council has acted unreasonably on substantive grounds by:
 - i) preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;
 - ii) not following the correct planning procedures before the decision was made;
 - iii) vague, generalised or inaccurate assertions about the proposal's impact, which are unsupported by any objective analysis and going against established guidance tests;
 - iv) acting contrary to, or not following, well established case law; and
 - v) not determining similar cases in a consistent manner.
5. From the evidence the Council's officer and appellant did not meet at the site to discuss the proposed development. I note the Council's explanation including

how alternative means were used to view the site. I also note the appellant's comments regarding the lack of contact with the appellant / agent. I cannot know for certain what happened. However, the Council's consideration of the site is reasonable and does not indicate that the absence of an arranged / accompanied site visit affected their assessment of the proposal. In any event, with reference to PPG¹, costs cannot be awarded for actions occurring during the determination of the planning application.

Reason for refusal 1

6. I am satisfied that this reason for refusal adequately describes the concerns that the Council has regarding the impact of the appeal development on the character and appearance of the area and on the standard of amenity space to be provided. The appellant disagrees with the Council, as do I, for the reasons contained in my main decision. However, this is a matter of planning judgement, and the Council has not behaved unreasonably in refusing planning permission on these grounds.
7. There is no compelling evidence that the Council has ignored the guidance contained in the Outlook, Amenity, Privacy and Daylight Supplementary Planning Document 2008 (SPD). It may have interpreted the SPD differently to the appellant, but again that is a planning judgement. Furthermore, Section 12 – Achieving well-designed places of the National Planning Policy Framework 2019 (the Framework) is clearly relevant to the first reason for refusal.
8. Each proposal should be determined on its individual merits with appropriate regard to the development plan and material considerations. I am not satisfied from the evidence that the examples of new dwellings that have been granted planning permission following the sub-division of existing residential sites² are sufficiently similar to the appeal development to raise issues of consistency. The size and positions of these sites and the scale and in some cases form of the proposals is different to the appeal development. No elevational or contextual drawings have been provided.
9. Furthermore, the approval of the H1 alterations by the Council on the appeal site³ is significantly different to the appeal development which is for the sub-division of a plot of land and the construction of an additional dwelling.
10. I have also considered the caselaw referenced by both parties and I am satisfied that in this regard, the Council's first reason for refusal does not represent a conflict.

Reason for refusal 2

11. The Council's second reason for refusal concerns the 'significantly harmful overbearing effect' of the proposed southern elevation wall as it projects beyond the rear elevation of 7 Westfield Avenue. The evidence shows that the height and rearward extent of the proposed southern elevation wall would be very similar to the existing southern elevation wall. Furthermore, the existing wall is adjacent to the boundary with No 7 whereas the proposed wall would be set back around 1 metre from the boundary.

¹ Paragraph: 033 Reference ID: 16-033-20140306 Revision date: 06 03 2014

² Appendices L, M, N, O, P, Q and R of the appellant's statement.

³ LPA Ref. PLAN/2019/0305

12. For these reasons the proposed southern elevation wall would have a less overbearing effect on the occupiers of No 7 than the existing wall. Consequently, I am satisfied that the Council's second reason for refusal demonstrates a manifestly inaccurate assessment of the proposal's impact in this regard, which it has not substantiated.

13. With reference to PPG⁴, these are substantive grounds for an award of costs.

Reason for refusal 3

14. A signed Unilateral Undertaking (UU) dated 19 February 2019 and covering a contribution of £897 towards Strategic Access Management and Monitoring costs pursuant to mitigation of adverse effects of the appeal development on the Thames Basin Heaths Special Protection Area (TBHSPA) is included in the evidence.

15. The Council refused planning permission on 13 March 2019. Its third reason for refusal was the absence of a mechanism to mitigate harm to the TBHSPA from the appeal development.

16. The aforementioned UU, together with a Community Infrastructure Levy would provide such a mechanism and is dated well before the Council's decision notice refusing planning permission. The Council also acknowledges receipt of the UU in an email dated 14 March 2019, the day after the decision notice was issued. The Council has not directly responded to this matter.

17. Again, with reference to PPG⁴ these are substantive grounds for an award of costs.

Other Matters

18. The Council's rebuttal to the application for costs invites me to consider whether the costs application, which the Council considers to be 'frivolous', is unreasonable behaviour which may leave the appellant at risk of an award of costs.

19. This is not a formal application for costs by the Council. Furthermore, for the reasons given above, I do not consider that an application for costs by the appellant in this case was unreasonable behaviour.

Conclusion

20. For these reasons, I find that unreasonable behaviour by the Council, resulting in unnecessary and wasted expense as described in PPG, has been demonstrated with regard to the second and third reasons for refusal only and that a partial award of costs is therefore justified.

Costs Order

21. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Woking Borough Council shall pay to Mrs Jenny Press, the partial costs of the appeal proceedings described in the heading of this decision limited to those

⁴ Paragraph: 049 Reference ID: 16-049-20140306 Revision date: 06 03 2014

costs incurred in responding to the Council's second and third reasons for refusal only.

22. The applicant is now invited to submit to Woking Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Andrew Parkin

INSPECTOR